



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33767233

Date: OCT. 18, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a medical cosmetologist, beauty expert, and health services manager, seeks first preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner demonstrates that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claims that she qualifies as an individual of extraordinary ability based on her medical education and years of experience as a medical cosmetologist, beauty expert, and health services manager. At the start of her career, the Petitioner managed a medical facility where she, along with other medical professionals, performed medical procedures. The Petitioner eventually changed her area of practice to become a medical cosmetologist, which involved providing non-surgical, injection-based treatments to patients, including those with facial deformities. The Petitioner continued to gain experience with injection of dermal fillers and eventually developed a proprietary technique for administering these products, later conducting training programs and master classes through which she passed on her knowledge and techniques to other medical professionals.

Because the Petitioner has not indicated or established her receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that she meets the seven regulatory criteria that are summarized below:

- (i), Receipt of lesser nationally or internationally recognized awards or prizes;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Performance in a leading or critical role for distinguished organizations; and

- (ix), Commanding a high salary or remuneration in relation to others.

The Director determined that the Petitioner demonstrated that she has participated as a judge of the work of others in the same or an allied field and therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv). The record supports this determination.

The Director concluded, however that the Petitioner did not establish that she met any of the remaining criteria that she claimed, namely, the six criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(iii), (v), (viii), and (ix). On appeal, the Petitioner asserts that she meets at least three criteria and is otherwise eligible for the requested classification. She contends that the Director overlooked or disregarded certain evidence and applied requirements that are not indicated by the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the Petitioner has met at least two additional criteria.

First, we will address the criteria listed at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence showing that the Petitioner made original contributions of major significance in her field. The record shows that in the course of work as a medical cosmetologist the Petitioner created a methodology for administering full-face Botox, which she titled [REDACTED]. The Petitioner explained that by developing her own methodology she created “an algorithm for selecting amounts of product, injection sites and hand positioning technique.” The record shows that the Petitioner applied for and was granted a patent by the Russian Federation for her invention of a “[m]ethod for rejuvenating facial and neck tissues in patients with signs of hypertonicity of depressor muscles causing aging.” Other documents concerning this criterion include letters from medical practitioners in the dermatology and medical cosmetology fields who describe and list the benefits of using the Petitioner’s [REDACTED] methodology in their respective practices, explaining that they received training in the use of this methodology through a masterclass or through professional training courses taught by the Petitioner in clinics where aesthetic medical treatments are offered. In addition, the Petitioner provided a sampling of medical spas and clinics that feature and advertise their use of the Petitioner’s [REDACTED] methodology for their clientele. In sum, we find that the evidence submitted is sufficient to show that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner also provided documentation to show that she satisfied the requirements of the criteria listed at 8 C.F.R. § 204.5(h)(3)(viii), which requires a showing of the Petitioner’s performance in a leading or critical role for distinguished organizations or establishments. Evidence pertaining to this criterion includes a detailed statement from [REDACTED] an executive at the [REDACTED], who explained that she worked with the Petitioner and can attest to the Petitioner’s contributions to [REDACTED] affiliate that manufactures Botox, a botulinum toxin, and Juvederm, an injectable filler. Ms. [REDACTED] highlighted the critical role of [REDACTED] “hierarchy of consultants, mentors, and trainers” in increasing its sales by teaching professionals how to use the [REDACTED] products. She also outlined the Petitioner’s long-standing relationship with [REDACTED] where she assumed increasingly more significant roles since 2009, starting as a consultant, then advancing to roles as an adviser and mentor in which she trained and certified doctors in the use of [REDACTED] products, and ultimately receiving the designation of an [REDACTED] which Ms. [REDACTED] described as “the highest distinction among [REDACTED] physicians” and limited to approximately 20 doctors out of nearly 3,000 applicants. Ms. [REDACTED] estimated that since 2022 the Petitioner has conducted “at least 100 trainings, which were attended by at least 1000 doctors throughout Russia”;

importantly, she stated that the Petitioner “served as a leading expert and contributed significantly to the company’s [] reputation and sales by training and consulting with hundreds of physicians throughout the country.”

Likewise, [] Branch Director of the [] branch in Russia, discussed the Petitioner’s critical role in her collaboration with [] he stated that “[t]he success of our [] business model depends on a reliable network of trusted cosmetologists who understand our products.” Mr. [] explained that based on the Petitioner’s “reputation in the field,” she was chosen from a pool of over 700 doctors to represent and be “the face of []” He also referred to the Petitioner’s use of [] drug, [] in implementing her patented methodology, which resulted in the Petitioner being selected as the main speaker at [] nationwide annual conference on cosmetology and aesthetic medicine. Further, he referred to the Petitioner’s training course at reputable beauty clinics, stating that her efforts as one of the “leading beauty experts in Russia . . . resulted in increased sales and the advancement of the [] brand in the Russian market.” In light of the evidence submitted, we find that the Petitioner has demonstrated that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

With eligibility under the three criteria discussed above, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director’s decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. As noted above, where a petitioner demonstrates that they meet these initial evidentiary requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1115, section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). The Director did not reach a finding on the final merits, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.